

MICHIGAN DEPARTMENT OF COMMUNITY HEALTH

***CERTIFICATE OF NEED PROGRAM
ANNUAL ACTIVITY REPORT***

***October 2003 Through September 2004
(FY2004)***

***Michigan Department of
Community Health***



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<http://www.michigan.gov/con>

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EXECUTIVE SUMMARY

One of the Michigan Department of Community Health's ("Department" or "MDCH") responsibilities under the Certificate of Need ("CON") law is to publish an annual activity report. This is the Department's sixteenth report, and it covers the period beginning October 1, 2003 through September 30, 2004 ("FY2004"). Data contained in this report may differ from prior reports due to updates subsequent to each report's publishing date.

Historical Overview

In 1974, Congress passed the National Health Planning and Resources Development Act (PL 93-641) that encouraged states to establish a CON program as a vehicle for health services planning. The law was repealed in 1986. Michigan's law was not repealed, and during the 1980s, it became evident that the expectations and decisions of Michigan's CON program were unclear and unpredictable to many applicants. As a result, the CON Reform Act of 1988 was passed that created a systematic standards development system and reduced the number of services requiring a CON. Since these reforms, the number of CON applications has declined, fewer denials are appealed, and fewer unnecessary or clearly inadequate applications are filed. The rest of this report describes recent trends and current activities of Michigan's CON program.

Administration

The MDCH's Certificate of Need Section ("Section") provides support for the CON Commission ("Commission") and its standards advisory committees. The Commission is responsible for setting review standards and designating the list of covered services. The Commission may utilize standard advisory committees to assist in the development of proposed CON review standards, which consists of a 2/3 majority of experts in the subject area. Further, the Commission, if determined necessary, may submit a request to the Department to engage the services of private consultants or request the Department to contract with any private organization for professional and technical assistance and advice or other services to assist the Commission in carrying out its duties and functions.

The CON Section also manages all incoming letters of intent, applications, and amendments to approved Certificates of Need. These functions include determining if CON is necessary and providing the necessary application materials.

During FY2004 the CON Section added a financial analyst to review the financial aspect of each application and issue a report based on the findings. Prior to the addition of the financial analyst, the Special Audits, Review and Compliance Section, Office of Audit, reviewed the financial aspects of each application.

CON Application Process

To apply for a CON, the following steps must be completed:

- ☐ Completion of a Letter of Intent
- ☐ Filing of CON Application
- ☐ Review by the CON Section
- ☐ Issuance of Proposed Decision by the Bureau in which the CON Section resides
 - Appeal if applicant disagrees with the Proposed Decision issued
- ☐ Issuance of the Final Decision by the MDCH Director

Types of Reviews

There are three types of CON review: nonsubstantive, substantive individual, and comparative (involving competitive applications for limited resources by two or more

applicants). The Administrative Rules for the CON program establish time lines by which the Department must issue a proposed decision on each CON application. The proposed decision for a nonsubstantive review must be issued within 45 days of the date the review cycle begins, 120 days for substantive individual, and 150 days for comparative reviews.

In FY2004, there were 101 applications for nonsubstantive review, 237 for substantive individual, and 10 for comparative, for a total of 348 CON review applications.

Proposed Decisions

In FY2004, 213 applications for CON review were approved, 24 approved with conditions, and 8 disapproved. Of the 8 applications disapproved, 4 were approved upon appeal and final decision or reconsideration, and 4 were confirmed as disapprovals.

Report

The following report presents information about the nature of these CON applications and decisions. Note that the data presented represents some applications that were carried over from last fiscal year and others that have been carried over into next fiscal year.



HISTORICAL OVERVIEW OF MICHIGAN'S CERTIFICATE OF NEED PROGRAM

In 1974, Congress passed the National Health Planning and Resources Development Act (PL 93-641) including funding incentives that encouraged states to establish a CON program. The purpose of the act was to facilitate recommendations for a national health planning policy. It encouraged state planning for health services, manpower, and facilities. And, it authorized financial assistance for the development of resources to implement that policy. Congress repealed PL 93-641 and certificate of need in 1986. At that time, federal funding of the program ceased and states became totally responsible for the cost of maintaining CON.

Michigan has had a state CON program since the early 1970s. Over the years, the law has been amended several times. The goal of the program is to balance cost, quality, and access issues and ensure that only needed services are developed in Michigan. However, the program's ability to meet these goals was significantly diluted by the fact that most application denials were overturned in the courts. In order to address this, Michigan's CON Reform Act of 1988 was passed to develop a clear, systematic standards development system and reduce the number of services requiring a CON.

Prior to the 1988 CON Reform Act, the Department found that the program was not serving the needs of the state optimally. It became clear that many found the process for developing planning policies to be excessively unclear and unpredictable. To strengthen CON, the 1988 amendments established a specific process for developing and approving standards used in making CON decisions. The CON review standards establish how the need for a project must be demonstrated. Applicants know before filing an application what specific requirements must be met.

The CON Reform Act created the CON Commission. The CON Commission, whose membership is appointed by the Governor, is responsible for approving CON review standards. The Commission also has the authority to revise the list of covered clinical services subject to CON review. The day-to-day operations of the program, including making decisions on CON applications consistent with the review standards, are carried out by the CON Section inside the MDCH. In 1993, additional amendments required ad hoc committees to be appointed by the Commission to provide expert assistance in the formation of the review standards. Further, PA 619 of 2002, expanded the CON Commission members to eleven members, eliminated ad hoc committees, and established the use of standard advisory committees or other private consultants/organizations for professional and technical assistance.

The CON program is now more predictable so that applicants reasonably can assess, before filing an application, whether a project will be approved. There are far fewer appeals of Department decisions. Moreover, the 1988 amendments appear to have reduced the number of unnecessary applications, i.e., those involving projects for which a need cannot be demonstrated.

This development process now provides a public forum for consideration of cost, quality, and access and involves organizations representing purchasers, payers, providers, consumers, and experts in the subject matter. The revised standards development process has resulted in CON review standards that are legally enforceable while assuring that standards can be revised promptly in response to the changing health-care environment. The 1988 amendments also significantly reduced the types of projects subject to CON review.

Trends in CON activity in recent years are characterized in the balance of this report.

ADMINISTRATION OF THE CERTIFICATE OF NEED PROGRAM

Certificate of Need Responsibilities

Certificate of Need Commission Responsibilities

The CON Section provides professional and support staff assistance to the CON Commission and its committees in the development of new and revised standards. Staff support includes researching issues related to specific standards, preparing draft standards, and performing functions related to both Commission and committee meetings.

The CON Commission is an eleven-member body, effective April 2003, with the changes established under PA 619 of 2002. Previously, it was a five-member body. The Commission, appointed by the Governor and confirmed by the Senate, is responsible for approving CON review standards used by the Department to make decisions on individual CON applications. The Commission also has the authority to revise the list of covered clinical services subject to CON review. [Appendix I](#) is a list of the CON commissioners.

Pursuant to PA 619 of 2002, effective March 31, 2003, Standards Advisory Committees ("SAC") may be appointed by and report to the CON Commission. The SACs advise the Commission regarding creation of, or revisions to, the standards. The committees are composed of a 2/3 majority of experts in the subject matter and include representatives of organizations of health-care providers, professionals, purchasers, consumers, and payers.

Certificate of Need Section Responsibilities

In addition, the CON Section has operational responsibility for the CON program. Staff members provide assistance to applicants prior to and throughout the CON process.

CON staff is responsible for reviewing all letters of intent ("LOI") and CON applications as prescribed by the CON Administrative Rules. Based on the LOI, staff determines if a proposed project requires a CON. If a CON is required, staff sends the appropriate application forms to the applicant for completion and submission to the Department. The application review process includes the assessment of each application for compliance with all applicable statutory requirements and CON Review Standards and preparation of a report documenting the analysis and findings.

In addition to the application reviews, the Section also reviews requests for amendments to approved CON applications as allowed by the Rules. Amendment requests involve a variety of circumstances including changes in the scope of an approved project, changes in how an approved project is financed, and authorization for cost overruns. The Rules allow actual project costs to exceed approved costs by a specified amount due to the difficulty in estimating construction and other capital costs at the time an application is filed. Currently, no fee is charged for processing amendments.

In addition, the Section provides the Michigan State Hospital Finance Authority ("MSHFA") with information when hospitals request financing through MSHFA bond issues and Hospital Equipment Loan Program ("HELP") loans. This involves advising MSHFA on whether a CON is required for the activities that will be financed through MSHFA or if a required CON has been obtained.

During FY2004, the Section added a financial analyst to review the financial aspect of each application and issue a report based on the findings. The financial analyst also conducts a review of amendments when there is a change in the project costs or sources of funds. Prior to the addition of the financial analyst, the Office of Audit reviewed the financial aspects of each application and subsequent amendments, as applicable.

CERTIFICATE OF NEED APPLICATION PROCESS

The following discussion briefly describes the steps an applicant follows in order to apply for a Certificate of Need.

Letter of Intent. An applicant must file a letter of intent with MDCH and, if applicable, the regional CON review agency. The LOI is a form supplied by MDCH. MDCH provides an applicant with the necessary application forms based on the information contained in the LOI form. All CON-related forms are now available on the MDCH Web Site.

Application. An applicant files the application forms with MDCH and, if applicable, the regional CON review agency on a designated application date. MDCH reviews an application to determine if it is complete. If not complete, additional information is requested. For nonsubstantive reviews, the application is deemed complete, or received, when the additional information has been provided. For substantive individual and comparative reviews in which additional information is requested, the application is deemed complete or received the first working day of the month following the receipt of the application. For nonsubstantive and substantive reviews, the review cycle starts after an application is deemed complete or received.

Review Types and Time Frames. There are three review types: nonsubstantive, substantive individual, and comparative. Nonsubstantive reviews that involve projects such as certain equipment replacements and changes in ownership do not require a full review. Substantive individual reviews involve projects that require a full review but are not subject to comparative review as specified in the applicable CON Review Standards. Comparative reviews involve situations where two or more applicants are competing for a resource limited by a CON Review Standard, such as hospital or nursing home beds. The maximum review time frames for each review type, from the date an application is deemed complete or received until a proposed decision is issued, are: 45 days for nonsubstantive, 120 for substantive individual, and 150 days for comparative reviews. The comparative review time frame includes an additional 30-day period for determining if a comparative review is necessary. Whenever this determination is made, the review cycle begins for comparative reviews.

Review Process. MDCH reviews the application. The CON Section reviews each application separately. Each application review includes a program and finance report documenting the Department's analysis and findings of compliance with the statutory review criteria, as set forth in Section 22225 of the CON law and the CON Review Standards.

Proposed Decision. The Bureau in which the CON Section resides issues a proposed decision to the CON applicant within the required time frame. This decision is binding unless reversed by the Department Director or appealed by the applicant. The applicant must file an appeal within 15 days of receipt of the proposed decision. In the case of a comparative review, a single decision is issued for all applications in the same comparative group.

Acceptance and Appeal of Decision. If the proposed decision is an approval, a final decision must be signed by the Director within five business days. If a hearing is requested, the final decision is not issued by the Director until completion of the hearing. If no hearing is requested, the Director issues the final decision.

TYPES OF CERTIFICATE OF NEED REVIEWS

The CON Administrative Rules establish three types of project reviews: nonsubstantive, substantive individual, and comparative substantive. As discussed in the previous section, the Rules specify the time frames by which the Department must issue its proposed decision related to a CON application. The time allowed varies based on the type of review.

Nonsubstantive

Table 1 provides an analysis of nonsubstantive review decisions, by project type. Nonsubstantive reviews involve projects that are subject to CON review but, based upon the department's determination, do not warrant a full review. The following describes some of the types of projects that potentially would be eligible for review on a nonsubstantive basis:

- ☐ Acquisition of an existing health facility;
- ☐ Replacement of existing hospital or nursing home beds at the same licensed site;
- ☐ Change of existing hospital beds from one licensed site to another licensed site in the same subarea and which involves a capital expenditure of less than \$2,622,500;
- ☐ Addition of host sites to an existing mobile equipment network, changing central service coordinators, or reconfiguring an existing mobile equipment network;
- ☐ Replacement or upgrade of medical equipment associated with the provision of a covered clinical service if the project meets the volumes required by the CON Review Standards and associated construction and/or renovation costs are less than the covered capital expenditure threshold;
- ☐ Acquisition or relocation of an existing megavoltage radiation therapy service and/or unit, acquisition of an existing surgical service, or acquisition of an existing MRI service and/or unit.

The Administrative Rules allow the Department up to 45 days from the date an application is deemed complete to issue a proposed decision. Reviewing acquisitions and equipment replacements on a nonsubstantive basis allows an applicant to receive a decision in a timely fashion while still being required to meet current CON requirements, including quality assurance standards.

**TABLE 1
NONSUBSTANTIVE REVIEW FINAL DECISIONS
FY2000 - FY2004**

PROJECT TYPE	FY2000	FY2001	FY2002	FY2003	FY2004
Facility Acquisition	33	33	20	26	32
Equipment Replacement/Relocation	54	62	44	44	52
Other*	5	4	9	11	11
TOTALS	92	86	79	93	95

*Other includes Bed Replacement (1), Mobile Lithotripsy (3), Mobile CT Scanner (7)

Substantive Individual

Substantive individual review projects require a full review but are not subject to comparative review and not eligible for nonsubstantive review. An example of a project reviewed on a substantive individual basis is the initiation of a covered clinical service such as open heart

surgery. The Department must issue its proposed decision within 120 days of the date a substantive individual application is deemed complete or received.

Comparative

Comparative reviews involve situations where two or more applications are competing for a limited resource such as hospital and nursing home beds. A proposed decision for a comparative review project must be issued by the Department no later than 120 days after the review cycle begins. The review cycle begins when the determination is made that the project requires a comparative review. According to the Rules, the Department has the additional 30 days to determine if, in aggregate, all of the applications submitted on a comparative window date exceed the current need, therefore, requiring a comparative review. A comparative window date is one of the three dates during the year on which projects potentially subject to comparative review must be filed. Those dates are February 1, June 1, and October 1 (or the first working day following any of those dates).

Section 22229 established the services that were subject to comparative review. Pursuant to Part 222, the CON Commission may, and has, changed the list of services reviewed on a comparative basis. **Figure 1** delineates services subject to comparative review.

FIGURE 1: Services Subject to Comparative Review

Neonatal Intensive Care

Extracorporeal Shock Wave Lithotripsy (ESWL)*

Hospital Beds

Hospital Beds for HIV Infected Individuals

Nursing Home Beds

Nursing Home Beds for Special Population Groups

Psychiatric Beds

Transplantations (excluding Pancreas)

* Extracorporeal Shock Wave Lithotripsy (ESWL) is no longer a comparative review effective June 4, 2004.

Table 2 provides a historical overview of the average review time by review type. This table also includes a breakdown of applications potentially subject to comparative review. In situations where no competing applications were filed on the same window date, the applications were reviewed on a substantive individual basis.

TABLE 2										
PROPOSED DECISIONS BY REVIEW TYPE AND AVERAGE NUMBER OF DAYS IN REVIEW CYCLE										
FY2000-FY2004										
	FY2000		FY2001		FY2002		FY2003		FY2004	
REVIEW TYPE	Total Decisions	Avg. Days	Total Decisions	Avg. Days	Total Decisions	Avg. Days	Total Decisions	Avg. Days	Total Decisions	Avg. Days
Nonsubstantive	70	23	75	29	59	33	84	39	95	40
Substantive	37	118	60	114	88	115	127	115	147	116
Potential Comparative	1	120	7	83	12	119	4	139	12	126
Comparative	0	0	4	120	36	145	2	149	8	169
TOTALS*	108		146		195		217		262	

*Excludes projects extended during the review cycle even though the proposed decision may have been issued during the FY.

Table 3 compares the number of applications submitted to the Department and the number of final decisions issued in the five (5) most recent fiscal years.

TABLE 3 APPLICATIONS SUBMITTED AND FINAL DECISIONS FY2000 - FY2004					
	FY2000	FY2001	FY2002	FY2003	FY2004
Applications Submitted	210	247	230	280	348
Final Decisions	168	198	224	250	308

Note: Not all applications received in a given year receive a decision in that same year.

Figures 2 and 3 illustrate the changes in the project review types in terms of applications submitted and final decisions issued in the last five (5) fiscal years.

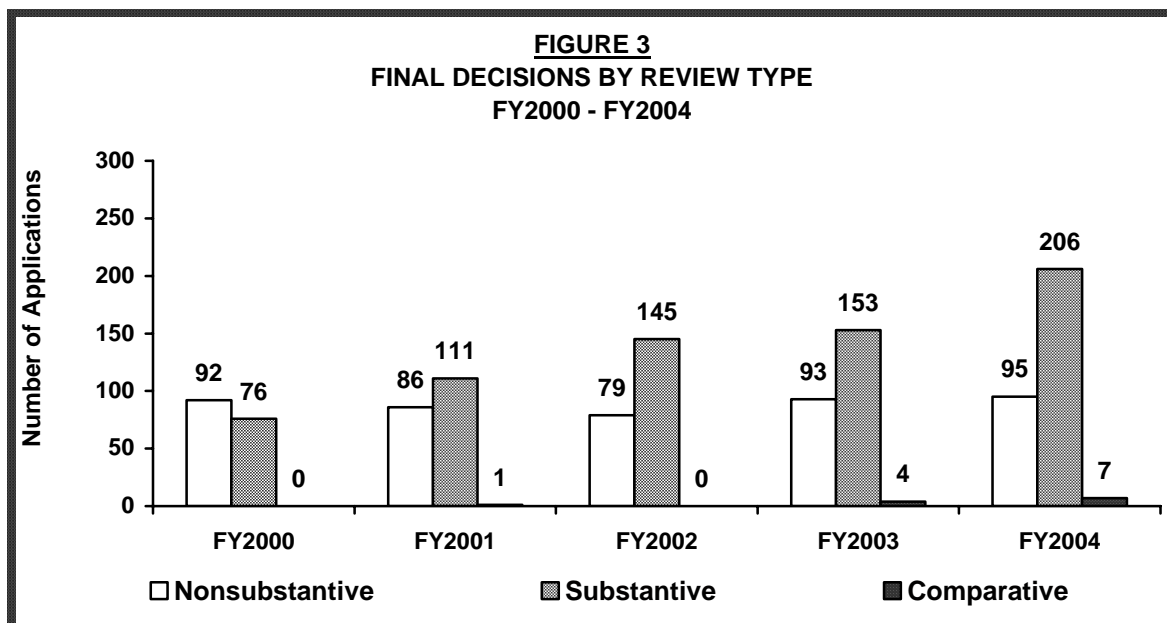
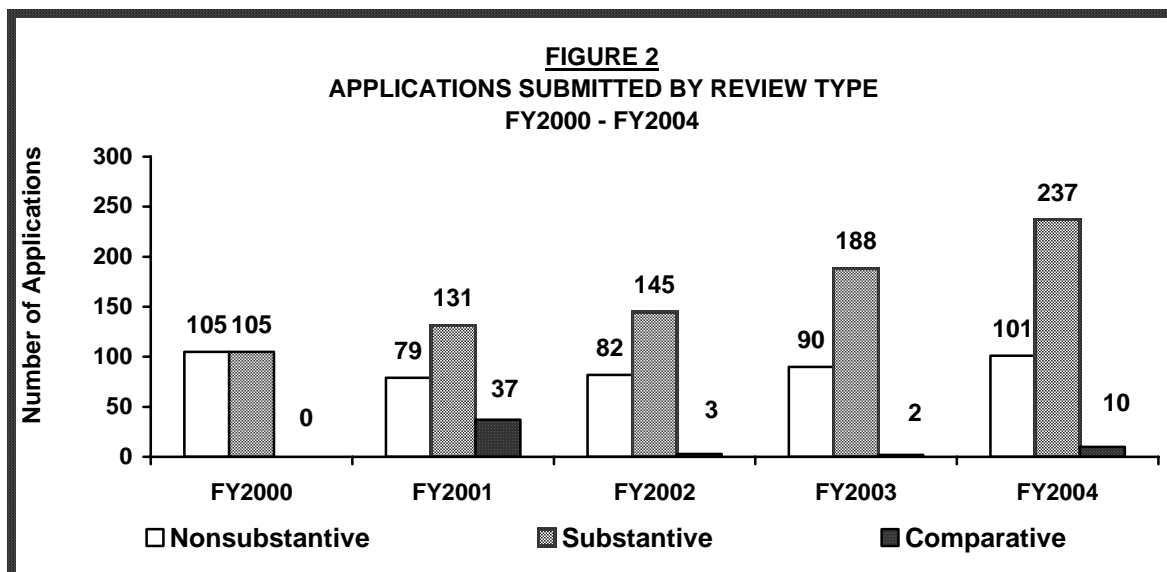


Table 4 provides the number and percent of applications that were incomplete when submitted to the Department. Prior to actually reviewing an application, the Department examines each application to determine if all of the necessary information requested in response to the Letter of Intent has been received as well as other information needed to demonstrate compliance with applicable statutory requirements. This phase of the review process involves approximately 30 days. The Department has up to 15 days to request additional information, and an applicant has up to 15 days to respond to the request.

TABLE 4 INCOMPLETE APPLICATIONS FY2000 - FY2004					
	FY2000	FY2001	FY2002	FY2003	FY2004
NONSUBSTANTIVE					
Complete	25	11	18	28	21
Incomplete	80	68	64	62	80
Percent Incomplete	76%	86%	78%	69%	79%
SUBSTANTIVE INDIVIDUAL					
Complete	1	8	43	77	89
Incomplete	104	123	102	111	148
Percent Incomplete	99%	94%	70%	59%	62%
COMPARATIVE					
Complete	0	0	0	0	0
Incomplete	0	37	3	2	10
Percent Incomplete	0%	100%	100%	100%	100%
ALL APPLICATIONS					
Complete	26	19	61	105	110
Incomplete	184	228	169	175	238
Percent Incomplete	88%	92%	73%	63%	68%

PROPOSED DECISIONS

Part 222 establishes a two-step decision-making process for CON applications that includes both a proposed decision and a final decision. After an application is deemed complete and reviewed by the CON Section, a proposed decision is issued to the applicant and the MDCH Director according to the time frames established in the Rules.

Table 5 compares the number of proposed decisions by decision type made.

TABLE 5 COMPARISON OF PROPOSED DECISIONS BY DECISION TYPE FY2000 - FY2004					
	Approved	Approved With Conditions	Disapproved	Percent Disapproved	TOTAL
FY2000	153	5	8	5%	166
FY2001	178	5	27	13%	210
FY2002	203	8	48	19%	259
FY2003	213	24	8	3%	245
FY2004	211	82	17	5%	310

Table 6 analyzes the disposition of proposed disapprovals issued.

TABLE 6 DISPOSITION OF PROPOSED DECISIONS TO DISAPPROVE AS OF SEPTEMBER 30, 2004						
	Proposed Disapproval	Withdrawn	Final Disapproval	Final Approval	No Final Decision as of 9-30-04	
FY2002	48	10	2	12	24	50%
FY2003	8	0	4	4	0	0%
FY2004	17	0	9	7	1	6%
TOTALS	73	10	15	23	25	34%

The types of projects still pending final decisions include applications for nursing home beds, hospital beds and positron emission tomography (PET) services. If a proposed decision is a disapproval, an applicant may request an administrative hearing that suspends the time frame for issuing a final decision. After a proposed disapproval is issued, an applicant may also request that the Department consider new information. The Rule allows an applicant to submit new information in response to the areas of noncompliance identified by the Department's analysis of an application and the applicable statutory requirements to satisfy the requirements for approval.

FINAL DECISIONS

The Director issues a final decision on a CON application following either a proposed decision or the completion of a hearing, if requested, on a proposed decision. Pursuant to Section 22231(1), the Director may issue a decision to approve an application, disapprove an application, or approve an application with conditions or stipulations. If an application is approved with conditions, the conditions must be explicit and must relate to the proposed project or the applicable provisions of Part 222. If approved with stipulations, the requirements must be germane to the proposed project and already agreed to by the applicant. The conditions must specify a time period within which the conditions shall be met, and that time period cannot exceed one year after the date the decision is rendered.

This section of the report provides a series of tables summarizing final decisions for each of the review thresholds for which a CON is required. It should be noted that the following tables will not equal the number of final decisions in **Table 3**, as many applications fall into more than one category.

Acquire, Begin Operation of, or Replace a Health Facility

Table 7 identifies applications reviewed under Section 22209(1)(a): "Acquire an existing health facility or begin operation of a health facility at a site that is not currently licensed for that type of health facility." Under Part 222, a health facility is defined as a general hospital, a hospital long-term care unit, a psychiatric hospital or unit, a nursing home, a freestanding surgical outpatient facility (FSOF), and a health maintenance organization under limited circumstances. This review category includes projects where a new or replacement health facility is proposed to be constructed or developed and projects involving the acquisition of an existing health facility through purchase or lease.

TABLE 7
SUMMARY OF FINAL DECISIONS
ACQUIRE, BEGIN OPERATION OF, OR REPLACE A HEALTH FACILITY
FY2000 - FY2004

Type of Health Facility	FY2000	FY2001	FY2002	FY2003	FY2004
Approved					
Hospital	3	6	9	4	12
Nursing Home/HLTCU	32	26	27	26	45
Psychiatric Hospital/Unit	3	1	1	1	2
Freestanding Surg OP Facility	7	2	9	10	16
TOTAL APPROVED	45	35	46	41	75
Disapproved					
Hospital	0	0	2	1	0
Nursing Home/HLTCU	0	0	0	0	2
Psychiatric Hospital/Unit	0	0	0	0	0
Freestanding Surg OP Facility	1	0	0	0	0
TOTAL DISAPPROVED	1	0	2	1	2

Change in Bed Capacity

Table 8 summarizes final decisions made on applications subject to review under Section 22209(1)(b): "Make a change in the bed capacity of a health facility." This category is defined to include an increase in the number of licensed hospital, nursing home, or psychiatric beds; a change in the licensed use; and the physical relocation of existing licensed beds from one geographic location to another without an increase in the total number of beds.

TABLE 8
SUMMARY OF FINAL DECISIONS FOR CHANGES IN BED CAPACITY
FY2000 – FY2004

Type of Health Facility	FY2000	FY2001	FY2002	FY2003	FY2004
Approved					
Hospital	4	4	4	5	14
Nursing Home/HLTCU	5	7	17	18	15
Psychiatric Hospital/Unit	0	0	0	0	0
TOTAL APPROVED	9	11	21	23	29
Disapproved					
Hospital	0	0	1	1	0
Nursing Home/HLTCU	0	2	0	0	2
Psychiatric Hospital/Unit	0	0	0	0	0
TOTAL DISAPPROVED	0	2	1	1	2

Note: Partial Psychology Programs were deregulated on 10/1/2002.

Covered Clinical Services

Table 9 includes projects reviewed under Section 22209(1)(c): "Initiate, replace, or expand a covered clinical service."

TABLE 9
SUMMARY OF FINAL DECISIONS FOR COVERED CLINICAL SERVICES
FY2000 - FY2004

Type of Covered Clinical Service	FY2000	FY2001	FY2002	FY2003	FY2004
Approved					
Open Heart Surgery	0	2	0	2	0
Extrarenal Transplants	0	0	0	2	0
Special Radiological (Includes Cardiac Cath) ¹	8	18	22	19	26
Megavoltage Radiation Therapy ¹	13	19	5	8	5
Specialized Inpatient Psychiatric	1	0	1	0	0
Partial Hospital Psychiatric	1	1	0	N/A	N/A
NICU	1	0	1	1	0
Surgical Facilities (ORs)	12	9	20	23	36
Air Ambulance ¹	0	0	2	0	2
PET Scanners ¹ Fixed	1	2	2	2	2
Mobile		0	0	5	6
Host		0	0	18	20
CT Scanners ¹ Fixed	31	47	38	47	57
Mobile	0	1	1	3	0
Host	4	4	4	2	6
MRI ¹ Fixed	7	8	13	27	22
Mobile	3	5	8	8	8
Host	11	12	8	38	18
UESW Lithotripsy ¹ Fixed	2	0	0	0	0
Mobile	0	1	2	0	1
Host	13	0	20	4	2
TOTAL APPROVED	71	129	147	209	211
Disapproved					
Open Heart Surgery	0	0	0	0	0
Extrarenal Transplants	0	0	0	0	0
Special Radiological (Includes Cardiac Cath) ¹	0	0	0	0	0
Megavoltage Radiation Therapy ¹	1	1	0	0	0
Specialized Inpatient Psychiatric	0	0	0	0	0
NICU	0	0	0	0	0
Surgical Facilities (ORs)	1	0	0	0	0
Air Ambulance ¹	1	0	0	0	0
PET Scanners ¹	0	0	0	0	0
Mobile		1	0	0	0
Host		7	0	0	0
CT Scanners ¹ Fixed	1	1	0	0	0
Mobile	0	0	0	0	0
Host	0	0	0	0	0
MRI ¹ Fixed	0	0	0	0	1
Mobile	0	0	1	0	0
Host	0	0	4	0	0
UESW Lithotripsy ¹ Fixed	0	0	0	0	0
Mobile	0	0	0	0	2
Host	0	0	0	0	0
TOTAL DISAPPROVED	1	10	5	0	3

¹ The number of decisions does not necessarily represent new capacity. Many applications involve replacement equipment or the addition of a host site to an existing mobile network.

Covered Capital Expenditures

Table 10 identifies the number of projects involving the fourth review threshold--a covered capital expenditure--listed by the type of health facility. Under Section 22209(1)(d), a person must obtain a CON for a covered capital expenditure. The capital expenditure threshold figures for clinical and nonclinical areas were increased, on January 1, 2003, to \$2,560,000 and \$3,840,000, respectively, pursuant to the requirements of Section 22221(g). Effective March 31, 2002, the capital expenditure threshold for nonclinical areas was eliminated, and the threshold for clinical areas was changed to \$2,500,000. This was based upon PA 619 of 2002. In computing a capital expenditure, the cost of non-fixed medical equipment (any medical equipment not on the list of covered clinical services) is excluded. In July 1993, the definition of a covered capital expenditure was amended to eliminate projects limited solely to the acquisition of non-fixed, non-medical equipment (telephones, computers, etc.). Typical examples of covered capital expenditure projects include construction, renovation, or the addition of space to accommodate increases in patient service volumes.

TABLE 10					
SUMMARY OF FINAL DECISIONS FOR COVERED CAPITAL EXPENDITURES					
FY2000 - FY2004					
Type of Health Facility	FY2000	FY2001	FY2002	FY2003	FY2004
	Approved				
Hospital	15	18	28	20	22
Nursing Home/HLTCU	2	4	11	12	8
Psychiatric Hospital/Unit/PHP	2	0	0	0	0
FSOF	2	1	1	4	0
TOTALS	21	23	40	36	30
	Disapproved				
Hospital	0	0	1	0	0
Nursing Home/HLTCU	0	1	0	0	1
Psychiatric Hospital/Unit/PHP	0	0	0	0	0
FSOF	0	0	0	0	0
TOTALS	0	1	1	0	1

Table 11 provide summaries of final decisions by decision type and review threshold.

TABLE 11					
FINAL DECISIONS BY SUMMARY OF THRESHOLDS					
FY2000 - FY2004					
Decision Type	FY2000	FY2001	FY2002	FY2003	FY2004
Approved	183	198	254	309	345
Disapproved	5	13	9	2	8
TOTAL FINAL DECISIONS	188	211	263	311	353

Note: Although there were 308 CON final decisions in FY2004, when analyzed by review threshold, there were 353 decisions since some applications involve more than one threshold.

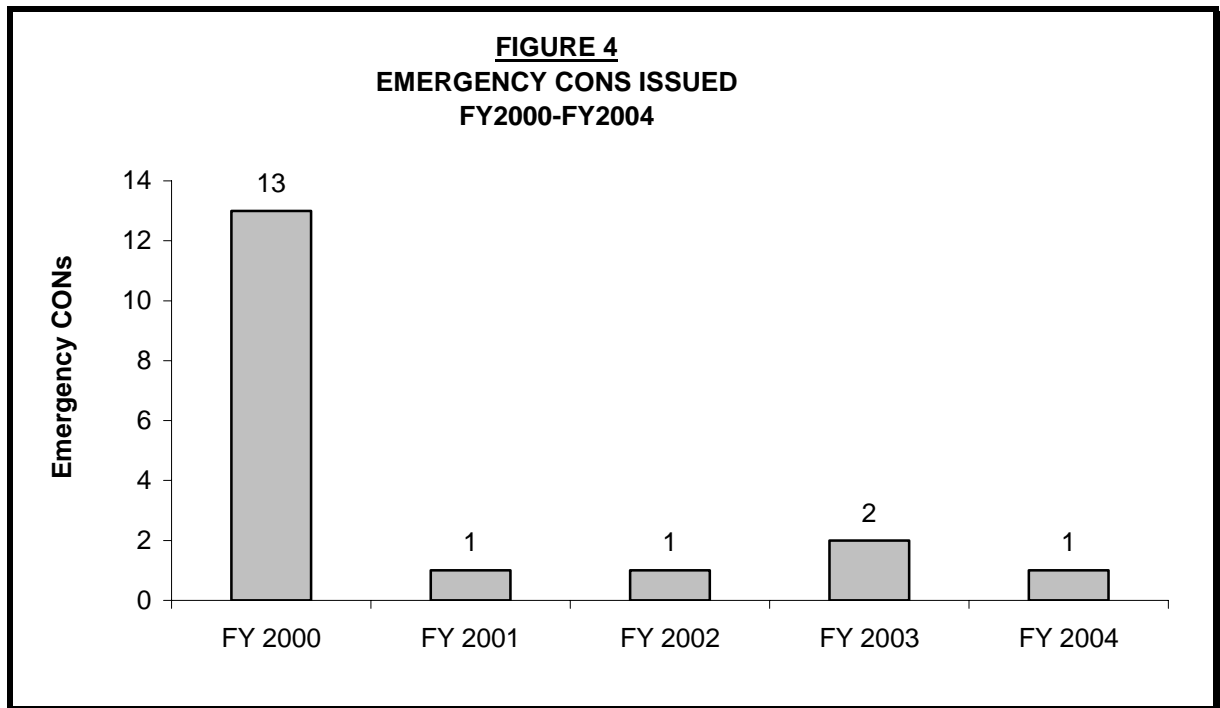
The majority of final decisions involved nursing home change of ownership projects and projects involving covered clinical services. The applications for covered clinical services primarily involve equipment acquisitions, both new and replacement. Few projects for new facilities or beds were proposed. Many construction projects previously subject to review involved changes to health facilities within limited areas of the facility. Since the 1988 amendments, only capital expenditure projects involving major changes at health facilities are subject to review.

Table 12 provides a comparison of the total number of final decisions and total project costs by decision type.

TABLE 12 COMPARISON OF FINAL DECISIONS BY DECISION TYPE FY2000 - FY2004				
	Approved	Approved With Conditions	Disapproved	TOTALS
Number of Final Decisions				
FY2000	153	11	4	168
FY2001	182	4	12	198
FY2002	210	6	8	224
FY2003	240	25	3	268
FY2004	221	81	6	308
Total Project Costs				
FY2000	\$467,085,573	\$16,666,330	\$5,818,762	\$489,570,665
FY2001	\$974,220,693	\$3,205,149	\$9,316,888	\$986,742,730
FY2002	\$1,030,698,218	\$11,898,680	\$22,141,586	\$1,064,738,484
FY2003	\$992,397,822	\$77,078,656	\$700,000	\$1,070,176,478
FY2004	\$933,587,233	\$715,077,786	\$28,681,746	\$1,677,346,765

EMERGENCY CERTIFICATES OF NEED

Figure 4 shows the number of emergency CONs issued. The Department is authorized by Section 22235 of the Public Health Code to issue emergency CONs.



AMENDMENTS

The Rules allow an applicant to request to amend an approved CON for projects less than 100 percent complete. The Department has the authority to decide when an amendment is appropriate or when the proposed change is significant enough to require a separate application. Typical reasons for requesting amendments to approved CONs include the following:

- **Cost overruns.** The Rules allow the actual cost of a project to exceed the approved amount by 15 percent of the first \$1 million and 10 percent of all costs over \$1 million. Fluctuations in construction costs can cause projects to exceed approved amounts.
- **Changes in the scope of a project.** An example is the addition of construction or renovation required by regulatory agencies to correct existing code violations that an applicant did not anticipate in planning the project.
- **Changes in financing.** Applicants may decide to pursue a financing alternative better than the financing that was approved in the CON.

The Rules state that the review period for a request to amend an approved CON shall not be longer than the original review period for the application. There were 70 amendments RECEIVED in FY2004.

TABLE 13 provides a summary of amendment requests received by the department.

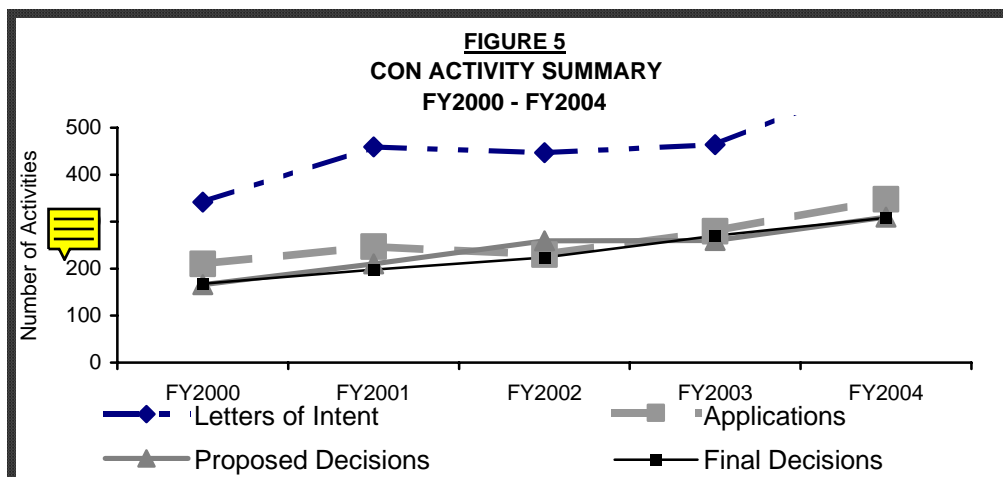
TABLE 13 AMENDMENT REQUESTS RECEIVED FY2002 - FY2004	
YEAR	NUMBER OF AMENDMENT REQUESTS
FY 2002	16
FY 2003	41
FY 2004	70

CERTIFICATE OF NEED ACTIVITY COMPARISON

Table 14 provides a comparison for various stages of the CON process.

TABLE 14 CON ACTIVITY COMPARISON FY2000 - FY2004				
	Number of Applications	% Change From Previous Year	Total Project Costs	% Change From Previous Year
Letters of Intent Submitted				
FY2000	342	14%	\$1,275,193,745	73%
FY2001	459	34%	\$1,564,993,008	23%
FY2002	447	-3%	\$1,374,379,486	-12%
FY2003	464	4%	\$2,065,537,808	50%
FY2004	608	31%	\$1,809,242,755	-12%
Applications Submitted				
FY2000	210	-4%	\$1,055,728,757	68%
FY2001	247	-7%	\$1,165,903,161	10%
FY2002	230	-7%	\$1,078,408,796	-8%
FY2003	280	22%	\$1,224,524,464	14%
FY2004	348	24%	\$1,697,271,072	39%
Proposed Decisions Issued				
FY2000	166	-12%	\$512,858,454	3%
FY2001	210	27%	\$981,894,585	91%
FY2002	259	23%	\$1,483,467,795	51%
FY2003	260	0%	\$1,061,816,408	-28%
FY2004	310	19%	\$1,677,346,765	59%
Final Decisions Issued				
FY2000	168	-10%	\$489,570,665	-3%
FY2001	198	18%	\$986,742,730	102%
FY2002	224	13%	\$1,064,738,484	8%
FY2003	270	21%	\$1,070,176,478	1%
FY2004	308	14%	\$1,677,346,765	57%

Figure 5 illustrates overall CON LOI, application, and decision activity. Activity has been gradually increasing in terms of applications, proposed decisions, and final decisions. Letters of intent have gradually increased since FY2000.



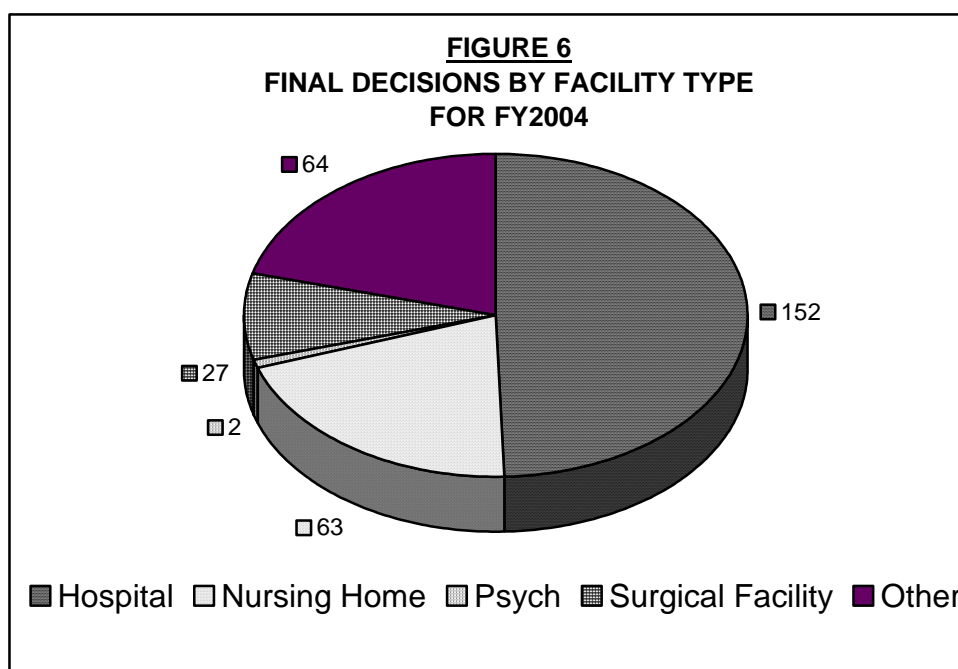
CERTIFICATES OF NEED EXPIRED IN FY2004

Table 15 analyzes the number and types of CONs by type of health facility that expired. During FY2004, a total of zero (0) CONs were expired by the Department because the applicant did not implement the CON.

TABLE 15 SUMMARY OF EXPIRED CONS FY2000 - FY2004					
	FY2000	FY2001	FY2002	FY2003	FY2004
Hospital					
Add Cardiac Cath	1				
Construction/Renovation		1			
Bed Replacement/Bed Additions		1		1	
Acquisitions			2		
Nursing Home					
Acquisitions	2	1			
New Nursing Homes	1		2		
Addition of Special Population Beds			1		
Bed Replace/Relocate within Zone	1				
Add PHP	1			1	
Acquisition		1	1		
Other					
New FSOF		1	1		
Purchase FSOF	1				
TOTALS	7	5	7	2	0

The majority of CONs that expire involve nursing homes. As shown in **Table 15**, the types of projects that are never implemented vary significantly.

Figure 6 illustrates the number of final decisions by facility type.



COMPLIANCE ACTIONS

There were 301 projects requiring follow-up for FY2004 based on the Department's Monthly Follow-up/Monitoring Report as shown in **Table 16**. As a result, zero (0) CONs were expired as shown in **Table 15**. Further, pursuant to Rule 325.9419, one (1) compliance order was issued in FY2004.

TABLE 16 COMPLIANCE ACTIONS FY2001 - FY2004				
	FY2001	FY2002	FY2003	FY2004
Projects Requiring Follow-up	169	184	327	301
Compliance Orders Issued	0	0	2	1

ANALYSIS OF CERTIFICATE OF NEED PROGRAM FEES AND COSTS

Section 20161(3) sets forth the fees to be collected for CON applications. The fees are based on total project costs and are set forth in **Table 17** below.

TABLE 17 CON APPLICATION FEES	
Total Project Costs	CON Application Fee
\$0 to 150,000	\$ 750
\$150,001 to 1,500,000	\$2,750
\$1,500,001 and above	\$4,250

Table 17A analyzes the number of applications according to which fee was assessed.

TABLE 17A NUMBER OF CON APPLICATIONS BY FEE FY2000 - FY2004					
CON Fee	FY2000	FY2001	FY2002	FY2003	FY2004
\$ 0	15	2	1	5	5
\$ 750	38	64	42	67	75
\$2,750	58	61	65	71	90
\$4,250	99	120	122	137	178
TOTALS	210	247	230	280	348

Note: No CON fees are required for the following: Emergency CONs and swing beds.

Table 18 provides information on CON costs and source of funds.

TABLE 18 CON PROGRAM COST AND REVENUE SOURCES FOR FY2000 – FY2004					
	FY2000	FY2001	FY2002	FY2003	FY2004
Program Cost	\$1,247,752	\$1,399,443	\$1,578,640	\$1,482,828	\$1,274,306
Application Fees	\$583,516	\$731,259	\$721,650	\$776,460	\$951,146
Fees % of Costs	47%	52%	46%	52%	75%

Source: MDCHS Budget and Finance Administration

Section 22215(6) states "If the reports received under section 22221(f) indicate that the certificate of need application fees collected under section 20161(2) have not been within 10% of $\frac{3}{4}$ the cost to the department of implementing this part, the commission shall make recommendations regarding the revision of those fees so that the certificate of need application fees collected equal approximately $\frac{3}{4}$ of the cost to the department of implementing this part." The fee information for FY2004 indicates the CON program is in compliance with Section 22215(6).

CERTIFICATE OF NEED COMMISSION ACTIVITY

During FY2004, the Certificate of Need Commission revised the review standards for Urinary Extracorporeal Shock Wave Lithotripsy (UESWL) Services, Computed Tomography (CT) Scanner Services, Air Ambulance Services, Bone Marrow Transplantation Services, Cardiac Catheterization Services, Heart/Lung & Liver Transplantation Services, Magnetic Resonance Imaging (MRI) Services, Neonatal Intensive Care (NICU) Services/Beds, Nursing Home & Hospital Long-Term-Care (HLTC) Unit Beds, Open Heart Surgery Services, Pancreas Transplantation Services, Position Emission Tomography (PET) Scanner Services, Psychiatric Beds/Services, Hospital Beds and Magnetic Resonance Imaging (MRI) Services.

The revisions to the CON Review Standards for UESWL Services received final approval by the CON Commission on March 9, 2004 and were forwarded to the Governor and legislature. Neither the Governor nor the legislature took a negative action within 45 days; therefore, the revisions became effective June 4, 2004. The final language changes included, but were not limited to, the following: elimination of comparative review, addition of comprehensive kidney stone treatment center (CKSTC), expansion of UESWL services, and addition of Medicaid participation requirements and "rural county" definition update pursuant to sections 333.22215(1)(b) and 333.22207(7), respectively, of PA 369 of 1978, as amended (PA 619 of 2002) and potential changes to related sections.

The revisions to the CON Review Standards for CT Scanner Services received final approval by the CON Commission on March 9, 2004 and were forwarded to the Governor and legislature. Neither the Governor nor the legislature took a negative action within 45 days; therefore, the revisions became effective June 4, 2004. The final language changes accomplished the following:

- 1) established requirements for PET/CT hybrid units, acquisition of existing CT scanner services, relocation of existing CT scanner services, and Medicaid participation requirements and "rural county" definition update pursuant to sections 333.22215(1)(b) and 333.22207(7), respectively, of PA 369 of 1978, as amended (PA 619 of 2002) and potential changes to related sections;
- 2) amended the requirements for initiation of CT scanner services and replacing/upgrading a CT scanner; and
- 3) included other technical changes.

The revisions to the CON review standards for Air Ambulance Services, Bone Marrow Transplantation Services, Cardiac Catheterization Services, Heart/Lung & Liver Transplantation Services, MRI Services, NICU Services/Beds, Nursing Home & HLTC Unit Beds, Open Heart Surgery Services, Pancreas Transplantation Services, PET Scanner Services, and Psychiatric Beds/Services received final approval by the CON Commission on March 9, 2004 and were forwarded to the Governor and legislature. Neither the Governor nor the legislature took a negative action within 45 days; therefore, the revisions became effective June 4, 2004. The final language changes included the addition of Medicaid participation requirements and "rural county" definition update pursuant to sections 333.22215(1)(b) and 333.22207(7), respectively, of PA 369 of 1978, as amended (PA 619 of 2002) and changes to related sections.

The revisions to the CON review standards for Hospital Beds services received final approval by the CON Commission on March 9, 2004 and were forwarded to the Governor and legislature. Neither the Governor nor the legislature took a negative action within 45 days; therefore, the revisions became effective June 4, 2004. The final language changes updated the subarea and bed need methodologies, and included the Medicaid participation requirements and "rural county" definition update pursuant to FY2004CON Annual Report

sections 333.22215(1)(b) and 333.22207(7), respectively, of PA 369 of 1978, as amended (PA 619 of 2002) and changes to related sections.

The revisions to the CON review standards for MRI Services received final approval by the CON Commission on May 11, 2004 and were forwarded to the Governor and legislature. Neither the Governor nor the legislature took a negative action within 45 days; therefore, the revisions became effective July 12, 2004. The final language changes would provide for additional access to fixed MRI services to patients in counties that do not provide fixed MRI services.

APPENDIX I - CERTIFICATE OF NEED COMMISSION

Renee Turner-Bailey, CON Chairperson
Jack Smant, CON Vice-Chairperson
Peter Ajluni, DO
Richard C. Breon (Replaced in 2004 by Dorothy E Deremo)
Bradley N. Cory
Dorothy E. Deremo
James K. Delaney
Edward B. Goldman
Norma Hagenow
James E. Maitland
Michael A. Sandler, MD
Michael W. Young, DO

For a list and contact information of the current CON Commissioners, please visit our web site at www.michigan.gov/con.